

DDA 78-0545/1

14 FEB 1978

DD/A Registry
File 0172-5

MEMORANDUM FOR: Office of Legislative Counsel

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Comments on Proposed Civil Service
Reform Bill

1. Forwarded in response to your request are the Office of Personnel comments on the proposed Civil Service Reform Bill.

2. The proposed Bill is designed to implement the recommendations of the Personnel Management Project--the President's Reorganization Project--which requires legislative action. There are 125 recommendations, many to be made effective by Executive Order or Office of Personnel Management (former CSC) Directives. Three of the recommendations, not included in the legislation (numbers 11, 12 and 13) concern the continued excepted status for agencies now outside the Civil Service system. According to these recommendations, the decision as to whether an agency, such as CIA is to maintain its excepted status or not, will be determined by the Office of Personnel Management (OPM).

3. The thrust of the proposed Bill appears to strengthen individual agency responsibilities and authorities, however, in every instance there is an entity outside the Agency to insure compliance either through audit or appeals systems.

4. It would appear to be in the best interest of the Agency to have our special excepted status determined in the legislation rather than rely on an OPM Directive. There is no problem for the Agency in following the spirit and intent of the proposed changes in the Civil Service system, but loss of our statutory excepted status would pose problems of protection of names, numbers, functions, et al.

5. Attached are review comments on the individual Titles of the proposed Bill.

F. W. M. Janney

Atts.

Distribution:

Orig - Adse
2 - D/Pers
1 - OP/P&C

OP/P&C [] cmc (14 Feb 78)

STATINTL

TITLE I - MERIT SYSTEM PRINCIPLES

This Title prescribes that the merit system principles (subsequently spelled out in Section 202 of this Title) shall apply to all departments and agencies in the Executive Branch, including CIA. The provisions of Section 201 of the Bill formalizes by statute that all Federal agencies will administer their personnel systems in accord with a specifically defined set of "merit system principles". Up to the present time merit principles have not been included in the statutes but are contained in Civil Service Commission guidances (such as the Federal Personnel Manual).

Section 202 enumerates eight principles which will be uniformly applicable to all Executive Branch agencies as regards personnel administration.

Comment

The substance of the eight merit principles are reflected in current Agency policies as regards personnel recruitment, selection, fair treatment, equal pay for equal work, utilization of the work force, performance evaluation, grievance procedures, etc. No problems are foreseen for the Agency in implementing the merit principles as presented in the legislation.

Section 205, however, provides that the General Accounting Office will conduct audits and reviews to assure compliance with the laws, Executive orders, etc, governing employment in the Executive Branch and assess the effectiveness and systemic soundness of Federal personnel management.

Except for the first few years of its existence, CIA has not been subject to audit nor oversight by the GAO nor the Civil Service Commission because of security considerations and protection of methods and sources, etc. This provision would make the Agency's personnel management system subject to GAO audit as to its compliance with laws, Executive orders and directives, rules, and regulations governing employment in the Executive Branch and evaluation as to the effectiveness of the Agency's systems.

Exemption of CIA from the GAO audit provisions of the section should be sought to assure continued protection of sensitive security information.

TITLE II - PROTECTION OF EMPLOYEE RIGHTS

The Provisions of this Title present the Agency with many difficulties. Section 202 would permit non-agency officials who are not part of the established judiciary "to subpoena Agency witnesses and documents and to seek a court order enforcing the subpoena". Section 204 gives a Special Counsel the authority "to conduct investigations upon a preliminary showing that a personnel action was taken in reprisal for the lawful disclosure of information concerning violations of laws, Executive Orders, and regulations". Federal employees found responsible would be subject to disciplinary action by the Merit System Protection Board.

These Provisions would present a conflict not only for our employees but also for the officials empowered to subpoena and investigate.

Two additional Sections, 206 and 207 are worth noting:

The Provisions of Section 206 would subject CIA to new requirements providing for adverse action and appeal rights for Agency employees.

Section 207 provides for the processing of employee adverse action and other appeals within the jurisdiction of the Merit System Protection Board. It also provides for review by the Court of Claims.

or U. S. Court of Appeals all orders or final decisions of the Board (with the exception of those complaints reviewed by U. S. District Courts). If CIA is not excluded, the appeals procedures would conflict with our statutory requirements for the protection of names, functions, et al.

Section 205 of this Title specifically includes CIA in the definition of "agency" by omitting it from the list of exceptions (and noting the inclusion in the analysis). Unless the provisions of Section 206 for 7501(b)(2)(B), page 2.13, would include the Agency on the basis of its present statutory status or the provisions in the charter legislation, the appeals system provided for in this section to the Merit System Protection Board would pose serious problems of security. We cannot determine if the wording of 7501(b)(2)(B) is meant to include Agencies such as CIA or is directed to specific positions such as the current Schedule Cs.

The provisions in the charter legislation as now drafted provide for the appointment separation of employees

"without regard to the provision of Title 5, United States Code, governing appointments and separations from the competitive service and fix the compensation of such personnel without regard to the provision of chapter 51 and subchapter III of chapter 53 . . ."

We assume this provision, if it survives, would overtake the general provisions of this Bill, but only for separations. The other

adverse actions, appeal systems would continue to apply.

At a minimum, we recommend CIA request exception from the appeals process to the Merit System Protection Board.

TITLE III - STAFFING

This Title provides for examining, selecting and retaining Federal employees.

Comment

The Agency fully supports the provisions of Section 306 which would enable us to equip an employee to fill a different position or acquire new skills needed for a position in another Agency. Overall, this would benefit the Government by retaining competent employees in the Federal Service. There is no mention in this provision for the placement of a RIF employee within his/her own Agency as a result of additional training. We recommend this provision be added.

Section 308 appears to be an extension of our Voluntary/Involuntary retirement procedure in RIF situations. It requires OPM approval of a special early retirement authority. Under present procedures, CIA has authority to declare surplus situations regarding early retirement without reference to CSC. We would argue that our present authority for deciding RIF situations should be retained for reasons of protection of numbers and functions.

We also endorse the provision of Section 303 (3326) for the delegation of authority to the agencies to determine manpower shortages in order to pay travel and transportation expenses of new EODs.

The other provisions of the Section for preference eligibles appear to apply only to the Competitive Service as does the probationary period for new supervisors.

TITLE IV - SENIOR EXECUTIVE SERVICE

This Bill establishes a Senior Executive Service comprising all managerial and supervisory positions correctly classified GS-16 through Executive Schedule IV. Agencies can request exclusion by the President from coverage under this Bill but shall make a "sustained effort" to bring its personnel system into conformity with the SES. Positions in the SES can be either career reserved or general and employees would be either career, noncareer or limited. No more than 15% of the total SES work force can be noncareer. Agencies will obtain their SES position ceiling from the Office of Personnel Management who will consult with OMB. In odd numbered years agencies will submit their SES requests for the next following two years to OPM for approval and for any subsequent increases or changes. Much of the Bill deals with the treatment of career employees (i.e. those whose qualifications have been reviewed and approved by OPM). If employee qualifications are not reviewed by OPM then the employee will serve in a noncareer status. The SES will consist of at least five salary levels. Annually, based on performance appraisals, agencies can grant lump sum performance awards consisting of a maximum of no more than 20% of base pay, to no more than 70% of the executives provided that the Agency has three or more employees in SES. Thus, in a given year, a 30% of SES employees would not be eligible for lump sum awards. The Bill prescribes that performance appraisals for SES employees will consist of one or more "successful" levels of performance, an unsatisfactory level, and a

"minimally satisfactory" level defined as not acceptable as a continuing level of performance. Meritorious Executive and Distinguished Executive Awards can also be granted annually by the President based on agency and OPM recommendations. Employees in the SES will be granted unlimited accumulation of annual leave.

Comments

1. Under the procedures outlined for Agency participation in the Senior Executive Service, full and detailed information regarding positions and employees to be included in the system would have to be provided the Office of Personnel Management and the members of any Qualifications Review Board (composed of persons from within and outside the Federal service) that might be established for the selection and certification process. Provisions for exclusions from participation in the SES include the requirement that agencies would present their requests and justifications to the President through the Office of Personnel Management who would investigate the reasons presented and make recommendations to the President whether the exclusion should be granted.

2. The protection of security information (identities of personnel, methods and sources) dictates that CIA must seek exclusion from this Title within the statute itself.

TITLE V - MERIT PAY PLAN

The provisions of this Title would institute a drastic departure from current pay and compensation concepts as regards granting of within-grade pay steps and pay comparability principles now forming the basis for annual legislative pay adjustments.

In summary this Title provides for the elimination of within-grade steps from supervisory and managerial positions GS-09 to GS-15 inclusive, and from all non-managerial supergrade positions. Based on the performance appraisal, these employees will be eligible for increases up to the maximum pay of the grade of the position, or to one-time cash bonuses based on the "degree to which an individual employee met or exceeded performance objectives". A pool of money would be made available each budget year for this purpose made up partly of annual salary increases withheld from employees of these positions. The Bill further provides that when the size of the comparability adjustment is determined each year, the Office of Personnel Management will make a determination as to what portion of that adjustment will be given as a general increase to employees covered by this merit pay plan and what portion will be used to partly fund the merit increase pool. It further provides that whatever portion is not granted as a general adjustment shall be used to partly fund the pool with the remaining funding to be determined considering what percent of payroll is generally expended for within-grade increases and quality step increases for employees who are not covered by this plan.

Comments

1. As presented the new "merit pay plan" would be applicable to all Federal agencies that utilize the General Schedule pay system and would include CIA under its coverage.

2. The changes proposed in this Title are of such dimension and potential impact on the Federal service that more extensive study by the Federal Personnel Management Project and "live" testing by selected pilot agencies are clearly indicated before implementation by statute. While some of the theoretical concepts are positive (e.g. to offer compensation incentives for supervisory excellence and penalties for less effective performance) the methodology proposed opens the door for possible abuses and departures from equity that could severely offset anticipated benefits.

The withholding of all or a portion of the annual salary increase from employees covered under the proposed merit pay plan discriminates against supervisory employees in favor of the workers supervised, or non-supervisory employees at the same grade, and also contradict the primary objective of the Bill, i.e., "pay increases shall be based on quality of performance rather than length of service". The annual legislative salary increases currently granted to Federal employees compensated under the General Schedule have no relationship to job performance, but rather are based on comparability with prevailing salaries in the private sector for similar kinds and levels of work.

3. If passed as presently proposed, impact on CIA would be as follows:

a. Since the merit pay plan is geared to the competitive Civil Service system we would have to develop our own policy guidelines in dealing with supervisory and managerial positions in which the incumbents are PRA'ed or undergraded. Since Agency employees tend to rotate more often than their counterparts in Federal agencies under Civil Service, we will have the problem of employees leaving and entering the plan and the resultant readjustment of WGI dates and the salaries of employees reassigned to or from positions that are under the plan.

b. The Agency would have to carefully define those positions which will be included in the merit pay plan and establish suitable controls to maintain and monitor this information. The Bill does not speak to "deputy" positions but they would probably also be included.

c. Agency adherence to the provisions of this Bill will add to the burden of career panels throughout the Agency. They will not only have to rank employees for inclusion under the merit pay plan, but also determine the amount of any increases these employees should receive based on their performance and in conformance with procedures developed by the Office of Personnel Management. These considerations also will have to be balanced against the funds available in the pool for these payments.

d. The Office of Finance will have to develop some method for determining the size of the pool available for this plan, and for controlling the disbursement of funds therefrom.

4. In summary, we believe it is premature to include this Title in the legislation proposal at this time and urge that the concepts and consequences of its application be more thoroughly studied and subjected to pilot testing. If this Title is retained in the Bill, CIA should seek exclusion in that the system is geared to the competitive Civil Service system of "rank in the position" without exceptions whereas the CIA system has the flexibility of selected "rank in the person" exceptions under certain managerial approved circumstances.

TITLE VI - RESEARCH AND DEMONSTRATION AUTHORITY

This Title provides the Office of Personnel Management with authority to conduct public management research, to carry out demonstration projects which test new approaches to the conduct of personnel management in the Federal service, and to waive specific portions of personnel laws in order to engage in controlled experiments.

Comment

This Title would not have any impact on CIA.

TITLE VIII - MISCELLANEOUS

This Title is simply a "catchall" to affirm that:

1. All Executive orders, rules and regulations--unless changed by provisions of this Act--shall continue in effect until modified, terminated, superceded or repealed by the OPM or the Merit Systems Protection Board as to matters within their jurisdiction;
2. Authorize appropriation of monies to carry out provisions of the Act;
3. No suit, action or other proceedings commenced prior to the effective date of this Act shall abate by reason of enactment of this act.
4. Powers of the President will not be affected except by express provisions of the Act.

Comment

No impact on CIA.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Comments on Proposed Civil Service Reform Bill

FROM:

Director of Personnel
5 E 58

EXTENSION

NO.

DD/A-Registry

78-0545/2

DATE

21 February 1978

STATINTL

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. Deputy Director for Administration

24 FEB 1978

Jack:

In the event that you have not had an opportunity to review, attached is a copy of our 14 February 1978 comments on the proposed Civil Service Reform Bill.

One of the principal concerns is that the possibility exists that if the Agency is not granted special excepted status in the legislation it will be subject to all the requirements, monitoring, etc., that is current practice for old-line agencies. As we point out in paragraph 4, the loss of our statutory excepted status would pose serious problems.

With the above in mind, I thought that you might want to consider calling Chairman Campbell yourself to ask if he would consider sponsoring an exception for this Agency.

We understand that the legislation is being submitted to the Congress on or about 28 February.

STATINTL

F. W. M. Janney

Att

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Approved For Release 2002/05/07 : CIA-RDP81-00142R000400010027-1

SUBJECT: (Optional)

DD/A Registry

78-0545

TO:

EXTENSION

NO.

Legislative Counsel
STATINTL
6D15 HQ

DATE

9 February 1978

(Officer designation, room number, and
wing)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALSCOMMENTS (Number each comment to show from whom
to whom. Draw a line across column after each comment.)DDA
7D18 HQ

3/9

[Signature]

Attached for your consideration
and comments is the Civil Service
Commission's draft bill on the
reorganization of the Civil Service.
I would appreciate receiving your
comments by COB 14 February 1978.
I must respond to OMB by COB
17 February 1978.

Acting Director/
Office of Personnel

2/9

[Signature]

STATINTL

Office of Legislative Counsel

Helen

DD/A Registry
78-0545

Action —

Response:
14 Feb
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